IN THE

Supreme Court of the United States.

Farr & Bailey Manufacturing Co.,
Appellees,
v.
The International Navigation Co.,
Appellant.

PETITION FOR WRIT OF CERTIORARI.

To the Supreme Court of the United States of America:

The petition of the International Navigation Company for a Writ of *Certiorari* directed to the Circuit Court of Appeals for the Third Circuit to bring before your Honorable Court the case of Farr & Bailey Manufacturing Company *v.* The International Navigation Company: said case being entitled in the Court Below as follows:

The Farr & Bailey Manufacturing Company,
Libellant-Appellant,

v.

The International Navigation Company, Owner of the Steamship "Indiana,"
Respondent-Appellee.

Your petitioner respectfully shows to this Court as follows:

First. Your petitioner is a corporation organized under the laws of the State of New Jersey, and a citizen of said State, doing business also in the State of Pennsylvania, and in the City of Philadelphia and elsewhere, and is and was the owner of the steamship "Indiana" at the time of the occurrences hereinafter described.

Second. In pursuance of a Bill of Lading printed in full in the record, p. 3, your petitioner agreed on or about the 21st day of May, 1895, to transport from Liverpool to Philadelphia upon the said steamship "Indiana," and deliver unto the libellants, Farr & Bailey Manufacturing Company, certain bales of burlaps therein mentioned and described; said bill of lading provided that the carrier shall not be liable for loss occasioned by accidents of navigation of whatever kind even when occasioned by the negligence, default or error in judgment of the pilot master, mariners or other servant of the ship owner, not resulting however in any case from want of due diligence by the owners of the ship, or by unseaworthiness of the ship at the commencement or any period of the voyage, provided all reasonable means have been taken to provide against such unseaworthiness; and said contract was further subject to the Act of Congress of February 13, 1893, commonly known as the "Harter Act."

Third. The steamship "Indiana" left the port of Liverpool on May 22, 1895, fully manned, equipped and supplied; she was a staunch boat without defect of structure or equipment, in all respects seaworthy, unless the facts hereinafter mentioned rendered her unseaworthy.

Fourth. The bales of burlaps were received on board, in good condition, and were stowed with other goods in a compartment of the lower steerage, or between decks of the vessel (just below the main or passenger deck) which was frequently used from time to time for the conveyance of passengers and sometimes for cargo; there was but one tier of cargo, two or three feet high covering the floor, and access to the port holes, of which there were two on either side of the compartment, was easy and unobstructed. The ports were of the usual character and dimensions, fitted first with a glass window set in brass, over which could be screwed down an iron plate or covering called a "dummy," both window and dummy being fastened by nuts and screws. All parts of the port covers were in perfect condition.

Access to the between decks compartment was by a hatchway which was closed and battened down, but the hatch cover being in sections was capable of being opened without difficulty, and in a few moments.

Fifth. During the voyage some four or five days after leaving Liverpool, the starboard port hole aft of lower steerage No. 3, either worked or was forced open and the water poured through, and damaged some of the bags of jute. Upon discovering by the soundings that there was water in the hold, at 9 A. M. Tuesday, May 26th, the captain ordered the carpenter to go down into hold No. 3, which he did, having no difficulty in throwing aside a section of the hatch, descending and crossing over the cargo to the port hole, which he found open. He instantly closed and screwed it fast, without difficulty or delay; there was no imperfection or breakage of the port hole, or its equipment.

Sixth. In the compartment, the cargo did not reach within a foot or so of the lower rim of the port hole and

in no respect impeded the opening or shutting of the same. On the outside, taking the draft of the vessel fore and aft when she left Liverpool, the port hole was four feet and half an inch above the water level.

Seventh. So far, the facts are undisputed. It was claimed by your petitioner in the Court below and in the District Court that the ports of the compartment No. 3 having been admittedly inspected upon the day of sailing and found duly closed and fastened, the port hole in question must have been opened by some one on board the ship after sailing, or must have become forced open, although originally properly fastened, in some inexplicable manner. It has been found as a fact by the Court below and by the District Court that the port hole in question, although not open so that water could be admitted at the time of sailing, was insufficiently and insecurely fastened and afterwards was worked open by the action of the sea, or some other cause.

Eighth. Upon the arrival of the steamship "Indiana" at Philadelphia, and the discovery of the damage to the bales of burlaps belonging to libellants, the latter on or about the 16th day of August, 1895, filed their libel in the District Court of the United States for the Eastern District of Pennsylvania against your petitioner in an action *in personam.* In the Admiralty to recover damages for injury to the said cargo, and on or about July 31, 1896, your petitioner filed an answer to the said libel denying liability and setting up *inter alia* the said Act of Congress of February 13, 1893, commonly known as the "Harter Act."

Ninth. Thereafter the cause was argued before the Honorable William Butler, Judge of the United States District Court for the Eastern District of Pennsylvania, who however resigned the office of Judge before a decision was rendered; and afterwards the said cause was

again argued before the Honorable John B. McPherson, Judge of the said Court and on April 28, 1899, the decision of the Court was rendered sustaining the libel and referring the cause to a commissioner to determine the extent of the loss.

Tenth. Afterwards, to wit, May 5, 1899, your petitioner having moved for a reargument of the cause, upon the question "assuming that the port light was open or insufficiently fastened at the time the vessel sailed on her voyage, did such fact render the vessel unseaworthy under the authorities and the other facts of the case as found by the Court," and the reargument having been granted, the cause was again argued before Judge McPherson and on June 22, 1899, the opinion of the Court on the reargument of the cause was filed, dismissing the libel with costs. The said decision of the District Court held that the condition of the port hole, when the "Indiana" left Liverpool, did not render the vessel unseaworthy, and the failure to close the same was a fault or error in management from which the Act of 1893 relieved your petitioner from liability, basing the case principally upon the rule laid down in the case of *The Silvia*, 171 U. S., 462, from which rule, however, the learned Judge himself dissented.

Eleventh. From the decree of the District Court the libellants, the Farr & Bailey Manufacturing Company, appealed to the Circuit Court of Appeals for the Third Circuit where the cause was heard on September 21, 1899, before Judges Acheson, Dallas and Gray. By the decision of the Court filed November 28, 1899, a majority of the Court, to wit, Judges Acheson and Dallas, filed an opinion per Dallas, J., reversing the decree of the District Court and holding that your petitioner was liable for the damage to the cargo above

mentioned, because the steamship "Indiana" was rendered unseaworthy by the condition of the port hole in question when she sailed from Liverpool. While Gray, J., filed a dissenting opinion holding that your petitioners on the facts disclosed in the record were within the exemption provided for in the third section of the Act of Congress known as the "Harter Act," entirely aside from the question of the applicability of the decision of the Supreme Court of the United States in the case of the "*Silvia*," and further that "The reasoning in the case of the '*Silvia*,' 171 U. S., 462, however, seems to me on every point applicable to the present case, and to be of binding authority on this Court as it was considered to be by the learned Judge of the Court below. The facts in that case were precisely like those of the present case. The only difference being that in the 'Silvia' the iron cover over the port was left open, while in the 'Indiana' the glass cover was left open or insecurely fastened."

Twelfth. Your petitioner therefore shows to this Honorable Court that of the four Judges who have rendered decisions in the cause, two, to wit, Judges McPherson and Gray, have held that the case of the "*Silvia*" above mentioned decided by this Court, rules this cause in favor of your petitioner, and two Judges, viz., Judges Acheson and Dallas, have held that it does not.

Thirteenth. Accordingly the questions of law arising upon this record are as your petitioners are advised by counsel and verily believe, of sufficient gravity and public importance to render it proper in the interests of jurisprudence and uniformity of decision that the Supreme Court should review the conclusions reached by the majority of the Court of Appeals, and determine

(1) Whether assuming the port hole in question to have been insufficiently fastened, at the time of sailing, such a condition, in view of the other facts found by the Court, deprived the vessel owner of the exemption of Section 3 of the Harter Act.

(2) Whether the case is not ruled by the authority of the "*Silvia*," 171 U. S., 462, in favor of your petitioners.

Fourteenth. As your petitioner is advised and believes, the present case is one in which it is proper for this Court to issue a *certiorari* to ascertain whether the law has been followed by the Court below in this case.

Whereupon your petitioners pray that this Honorable Court may be pleased to grant a writ of certiorari in this case, to the said Circuit Court of Appeals for the third Circuit to bring up this case for its review and determination and for such other and further proceedings as it may direct.

THE INTERNATIONAL NAVIGATION CO.

Eastern District of Pennsylvania, ss.

being duly sworn according to law deposes and says that he is of the International Navigation Company petitioner above named, and that the facts set forth in the foregoing petition are true to the best of his knowledge, information and belief.

Sworn and subscribed
before me, this
day of

I HEREBY CERTIFY that I have examined the foregoing petition and that in my opinion the same is well founded; and that the cause is one in which the prayers of the petitioners should be granted by the Court.

J. RODMAN PAUL,
of Counsel for the Appellant,
The International Navigation Co.